



TEXAS DEPARTMENT OF INSURANCE

Division of Workers' Compensation - Medical Fee Dispute Resolution (MS-48)

7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645

(512) 804-4000 | F: (512) 804-4811 | (800) 252-7031 | TDI.texas.gov | @TexasTDI

MEDICAL FEE DISPUTE RESOLUTION FINDINGS AND DECISION ***GENERAL INFORMATION***

Requestor Name

PHYSIOARTS

MFDR Tracking Number

M4-16-3054-01

MFDR Date Received

June 6, 2016

Respondent Name

ZENITH INSURANCE CO

Carrier's Austin Representative

Box Number 47

REQUESTOR'S POSITION SUMMARY

Requestor's Position Summary: "[Injured employee] had been receiving authorized physical therapy previous to these denied DOS and is currently receiving authorized treatment post-op. [Injured employee's] treating physician erroneously applied to the NY State Workers Compensation Board for payment on unpaid doctor's visits. This request resulted in an Order of the Chair from the NY State Worker's Compensation Board granting additional physical therapy services. We provided these additional physical therapy services in good faith based on this Order of the Chair from the NY State Workers Compensation Board. It's imperative to note that the physical therapy services we provided based on this erroneous authorization were deemed medically necessary by the two doctors [injured employee] saw during this time, his physical therapist as well as the New York State Workers Compensation Board."

Amount in Dispute: \$2,268.40

RESPONDENT'S POSITION SUMMARY

Respondent's Position Summary: "These services were disallowed by Zenith as treatment not authorized. On 08/31/2015, Donald Rose, MD requested preauthorization from UniMed Direct for Physical Therapy 2x6 weeks. Therequest [sic] was denied as peer to peer contact was not successful and the modification of the request is not possible without peer review... Our records indicate that there have been additional requests for physical therapy by this same provider prior to and after the September denial. Zenith's position is that no reimbursement is due to the Provider as these physical therapy services were denied through utilization review in Texas."

Response Submitted by: The Zenith

SUMMARY OF FINDINGS

Date(s) of Service	Disputed Service(s)	Amount In Dispute	Amount Due
October 27, 2015 through December 16, 2015	97140, 97110, 97112 and 97002	\$2,268.40	\$0.00

FINDINGS AND DECISION

This medical fee dispute is decided pursuant to Texas Labor Code §413.031 and all-applicable, adopted rules of the Texas Department of Insurance, Division of Workers' Compensation.

Background

1. 28 Texas Administrative Code §133.307 sets out the procedures for resolving medical fee disputes.
2. 28 Texas Insurance Code Chapter 1305 applicable to Health Care Certified Networks.
3. 28 Texas Administrative Code §134.600 sets out the preauthorization guidelines.
4. The insurance carrier reduced payment for the disputed services with the following claim adjustment codes.
 - 242 — Services not provided by network/primary care providers
 - 230— Treatment not authorized

Issues

1. Under what authority is a request for medical fee dispute resolution considered?
2. Did the requestor meet the exception outlined in Chapter 1305.006?
3. Did the requestor obtain preauthorization for the disputed services?

Findings

1. The requestor seeks reimbursement for physical therapy services rendered in New York on October 27, 2015 through December 16, 2015, to an injured employee with an existing Texas Workers' Compensation claim. The requestor was dissatisfied with the respondent's final action and as a result, the requestor filed for dispute resolution under 28 Texas Administrative Code §133.307. The Division concludes that because the requestor sought the administrative remedy outlined in 28 Texas Administrative Code §133.307 for resolution of the fee matter, the dispute is to be decided under the jurisdiction of the Texas Workers' Compensation Act and applicable rules.
2. The insurance carrier denied/reduced the disputed services with reason code; "242 – Services not provided by network/primary care provider."

The requestor filed this medical fee dispute to the Division asking for resolution pursuant to 28 Texas Administrative Code (TAC) §133.307 titled *MDR of Fee Disputes*. The authority of the Division of Workers' Compensation to resolve matters involving employees enrolled in a certified health care network, is limited to the conditions outlined in the applicable portions of the Texas Insurance Code (TIC), Chapter 1305 and limited application of Texas Labor Code statutes and rules, including 28 Texas Administrative Code §133.307.

Texas Insurance Code §1305.153 (c) provides "Out-of-network providers who provide care as described by Section 1305.006 shall be reimbursed as provided by the Texas Workers' Compensation Act and applicable rules of the commissioner of workers' compensation."

Chapter 1305.006 outlines the insurance carrier's liability for out-of-network healthcare and states, "An insurance carrier that establishes or contracts with a network is liable for the following out-of-network health care that is provided to an injured employee:

- (1) emergency care;
- (2) health care provided to an injured employee who does not live within the service area of any network established by the insurance carrier or with which the insurance carrier has a contract; and
- (3) health care provided by an out-of-network provider pursuant to a referral from the injured employee's treating doctor that has been approved by the network pursuant to Section [1305.103](#).

Review of the documentation submitted by the requestor supports that the disputed services were rendered in New York on October 27, 2015 through December 16, 2015. The Division finds that the requestor therefore, met the exception outlined in Chapter 1305.006 (2). As a result, the disputed services are under the jurisdiction of the Division of Workers' Compensation and therefore, eligible for medical fee dispute resolution. The disputed services are therefore reviewed pursuant to the applicable rules and guidelines.

3. The insurance carrier denied the disputed services with claim adjustment reason code "230— Treatment not authorized." The requestor states, "...the Order of the Chair through which we took our mistaken authorization...establishing the medical necessity of this treatment."

The respondent states, "These services were disallowed by Zenith as treatment not authorized. On 08/31/2015, Donald Rose, MD requested preauthorization from UniMed Direct for Physical Therapy 2x6 weeks. Therequest [sic] was denied as peer to peer contact was not successful and the modification of the request is not possible without peer review... Our records indicate that there have been additional requests for physical therapy by this same provider prior to and after the September denial. Zenith's position is that no reimbursement is due to the Provider as these physical therapy services were denied through utilization review in Texas."

The Division finds that the requestor made an attempt to obtain preauthorization as indicated above, however the disputed services were not preauthorized after an unsuccessful attempt by to conduct a peer to peer.

Per 28 Texas Administrative Code §134.600(p)(5) "(p) Non-emergency health care requiring preauthorization includes... (5) physical and occupational therapy services, which includes those services listed in the Healthcare Common Procedure Coding System (HCPCS) at the following levels: (A) Level I code range for Physical Medicine and Rehabilitation, but limited to: (i) Modalities, both supervised and constant attendance; (ii) Therapeutic procedures, excluding work hardening and work conditioning..."

Pursuant to 28 Texas Administrative Code §134.600(p)(5), the Division finds that preauthorization is required for the disputed services. The requestor submitted insufficient documentation to support that the disputed services were preauthorized, as a result, reimbursement cannot be recommended for disputed dates of service, October 27, 2015 through December 16, 2015.

Conclusion

For the reasons stated above, the Division finds that the requestor has not established that reimbursement is due. As a result, the amount ordered is \$0.00.

ORDER

Based upon the documentation submitted by the parties and in accordance with the provisions of Texas Labor Code §413.031, the Division has determined that the requestor is not entitled to reimbursement for the disputed services.

Authorized Signature

Signature

Medical Fee Dispute Resolution Officer

November 18, 2016
Date

YOUR RIGHT TO APPEAL

Either party to this medical fee dispute has a right to seek review of this decision in accordance with 28 Texas Administrative Code §133.307, effective May 31, 2012, *37 Texas Register 3833*, **applicable to disputes filed on or after June 1, 2012.**

A party seeking review must submit a **Request to Schedule a Benefit Review Conference to Appeal a Medical Fee Dispute Decision** (form **DWC045M**) in accordance with the instructions on the form. The request must be received by the Division within **twenty** days of your receipt of this decision. The request may be faxed, mailed or personally delivered to the Division using the contact information listed on the form or to the field office handling the claim.

The party seeking review of the MDR decision shall deliver a copy of the request to all other parties involved in the dispute at the same time the request is filed with the Division. **Please include a copy of the *Medical Fee Dispute Resolution Findings and Decision*** together with any other required information specified in 28 Texas Administrative Code §141.1(d).

Si prefiere hablar con una persona en español acerca de ésta correspondencia, favor de llamar a 512-804-4812.